HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32(2)(b)

Description of the case.

C-482 No. 1043/06

Ratan Singh

Vs.

Vs. Judicial Magistrate and others.

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 20th December 2006

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

ORIGINAL JURISDICTION

C482 no.1043 OF 2006

Ratan Singh,
S/o late Sri Hri Singh,
Sachiv/Maha Prabandhak,
District Co-Operative bank Ltd.
Haridwar, District-Haridwar.
At Present Sachiv/Maha Prabandhak,
District Co-Operative bank Ltd.
Moradabad, District-Moradabad. .....Applicant.

Vs.

1. Judicial Magistrate Roorkee,
   Dsitrict Haridwar.
2. Suraj Bhan, S/o Sri Dhoom Singh,
   R/o Village Ashafnagar, Police station-Manglaur,
   Tehsil-Roorkee, District-Haridwar.

.....Opposite Parties.

Hon'ble Rajesh Tandon, J.

Heard Sri M.S.Tyagi, counsel for the applicant and A.G.A. for the respondent no.1.

2. By the present application filed under Section 482 of the Code of Criminal Procedure, the applicant has sought following relief:

"It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to quash and set-aside the impugned order dated 24.9.1996 and 9.1.1998 passed by Judicial Magistrate Roorkee in criminal case no.

2347/2006 (Suraj Bhan Versus G.D. Sharma and others) under Section 409 of I.P.C. Police Station-Manglaur, District Haridwar failing which the applicant will suffer irreparable loss and injury.

It is, therefore, most respectfully prayed that this Hon'ble Court may also graciously be pleased to stay the proceedings of case no. 2347/2006 (Suraj Bhan Versus G.D. Sharma and others) under section 409 of I.P.C. Police Station-Manglaur, District-Haridwar pending in the court of opposite party no.1, And/or also be pleased to pass any such order which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case, during the pendency of the present case in this Hon'ble court."

3. Briefly stated, a complaint Case No. 418 of 1996 (New Number 2347 of 2006) was filed by the opposite party no. 2- Suraj Bhan in the Court of Judicial Magistrate, Roorkee, District Haridwar against three employees of District Co-Operative Bank Haridwar namely G.D. Sharma, Ved Pal Singh and present applicant-Ratan Singh under Section 420,406 I.P.C. On recording evidence of complainant under Section 200 and witnesses under Section 202 Cr.P.c. the Judicial Magistrate, Roorkee summoned the applicant and other accused in trial for the offence punishable under section 409 I.P.C. vide order dated 24.09.1996.

4. Against the impugned summoning order, an objection was filed on 28.02.1997 stating therein all the

transactions between the Co-Operative Bank Haridwar and opposite party no. 2 in regard to the aforesaid Fixed Deposits and other transactions.

5. Counsel for the applicant has submitted that against the order dated 18.08.1994 passed by the District Consumer Forum an appeal No. 2552 of 1994 is pending before the State Commission and due to this, the payment has been stopped.

6. Counsel for the applicant has submitted that the concerned Magistrate has rejected the above objections vide-order dated 09.01.1998 and held that there is no ground to disturb the summoning order dated 24.09.1996.

7. Against the aforesaid order, applicant preferred a Criminal Revision being Criminal Revision no. 29 of 1998 in the Court of Sessions Judge, Haridwar with an application for condonation of delay. The revision was transferred to IInd Additional Sessions Judge, Haridwar, who vide order dated 24.11.1998 rejected the application for condonation of delay and subsequently dismissed the revision treating it to be barred by limitation.

8. According to the counsel for the applicant, the dispute is between the Distinct Co-Operative Bank and the opposite party no.2 and Punjab National Bank B.T. Gunj Roorkee and Mr. Tara Chand for the recovery of the aforesaid amount, payment of which has been made to opposite party no. 2 despite the instruction to stop the payment of the aforesaid cheque by its drawer Mr. Tara

Chand and in this regard a Civil Suit No. 126 of 1995 Zila Sahakari Bank Ltd. Haridwar Vs. Punjab National Bank B.T. Gunj and otherwise was instituted on 30.05.1995.

9. District Co-operative Bank Haridwar has submitted two account payee cheques for a sum of Rs. 2,04,238/- and 5180/- before the District Consumer Forum Haridar in the execution case No. 14/2004 Suraj Bhan Vs. District Co-Operative Bank Ltd., Haridwar.

10. Counsel for the applicant has submitted that the complaint case has been filed by opposite party no. 2 as a counter blast of aforesaid recovery suit filed by District Co-operative Bank just to harass the applicant and two other bank employees with ulterior motives and to safeguard himself from the recovery of aforesaid amount, which ash been credited tin his account despite the stop payment of the cheque by its drawer.

11. Further it has been submitted that during the litigation, two other accused persons have retired from the service of District-Cooperative bank and therefore the applicant is only being harassed.

12. IN ***Medchl Chemicals and Pharma (P) Ltd. V. Biological E. Ltd. And other (2003) 3 SCC 269,*** *The Apex Court has been observed as under:*

> *"19. Considering the factual aspect of the matter, we unhesitingly state, however, that the issue involved in the matter under consideration is not a case in which the criminal trail should have been short-circuited. We, thus, without expressing any opinion on the merits of the case allow the appeal and set aside the impugned order of*

the high Court and restore the complaint. The learned trial Magistrate shall proceed with the complaint and dispose of the same in accordance with the law with utmost expedition. Be it clarified however that observations as above in this judgment be not taken as an expression of any opinion of ours."

13. Since it is complaint case, therefore, it is relevant to quote following portion of ***Smt. Husna and others v. State of U.P. and others [2006 (56) ACC 659]:***

"7. The petition is finally disposed of witht eh direction to the petitioners to appear before the Court concerned within 15 days of passing of this order and if they do so, the Court will permit them to file appearance bonds to has satisfaction for their regular appearance in the case."

14. In view of the aforesaid the applicant is directed to present himself before the Magistrate concerned and ensure his presence by furnishing personal bonds to the satisfaction of the Magistrate concerned for their regular appearance in the case.

15. Subject to the observations made above, application under Section 482 Cr.P.C. is disposed.

(Rajesh Tandon, J.)

20th December, 2006

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